IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 196 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

AJAY BUILDERS

Appearance:

1. INCOME TAX REFERENCE No. 196 of 1990
MR MANISH R BHATT, Sr. Standing Counsel
for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the Revenue, following

question of law is referred for the opinion of this Court:

"Whether the Tribunal is right in law and on facts in allowing the claim for investment allowance on plant and machinery engaged in the business of construction ?"

2. The assessment year involved is assessment year 1983-84. The respondent in this case is a registered firm engaged in the business of construction. The I.T.O. in the course of the assessment proceedings rejected the claim on acount of investment allowance.

3. The C.I.T. (A) however directed the I.T.O. to allow the claim. This he did relying upon the two decisions of the Ahmedabad Benches of the Tribunal, namely, those of Ranjit Construction Co. (ITA No. 127/Ahd/198-4, dtd. 9/11/84) and Shah Engineering Co. (ITA No. 870/Ahd/83, dtd. 24.1.1984).

4. The Tribunal confirmed the order of the C.I.T.(A).

5. Heard Mr. Manish Bhatt, learned Senior Standing Counsel appearing for the Revenue. No one appears on behalf of the respondent-assessee though the notice was duly served. At the time of hearing of this Reference, our attention is drawn to the decision of the Supreme Court in the case of C.I.T. Vs. N.C. Budharaja and Co. And Anr. (1993) 204 ITR 413, wherein it is held that the assessee is not entitled to investment allowance under Section 32A because that provision did not comprehend within its ambit construction of dam, bridge, road or canal or other similar construction. It is further observed by the Supreme Court that particularly in view of the legislative history of the relevant provisions and the context, it is not possible to read the word "construction" in Section 32A(2)(b)(iii) as referring to construction of dams, bridges, buildings, roads or canals. Since the issue involved in the present Reference is directly covered by the above decision of the Supreme Court, we hold that the Tribunal is not right in allowing the claim of the assessee for investment allowance for plant and machinery engaged in the business of construction.

6. We, therefore, answer the question referred to us in negative, that is in favour of the Revenue and against

the assessee.

7. The Reference is accordingly disposed of with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]